

STATE OF MICHIGAN  
COURT OF APPEALS

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ALISON Q. WOLFSON,

Plaintiff/Counter-Defendant-  
Appellee,

v

MARK F. GRECH,

Defendant/Counter-Plaintiff-  
Appellant.

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UNPUBLISHED  
December 19, 2006

No. 269930  
Wayne Circuit Court  
Family Division  
LC No. 01-138395-DM

Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant/counter-plaintiff appeals as of right an order of the trial court denying his motion for a change in custody of his two minor children and imposing sanctions pursuant to MCR 2.114. We affirm.

Defendant first argues that the trial court erred in concluding that he failed to show by a preponderance of the evidence proper cause or a change in circumstances. We disagree.

When reviewing a custody case, three standards of review are applicable. See MCL 722.28. We review a trial court's factual findings under the great weight of the evidence standard. *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). "A trial court's findings regarding the existence of an established custodial environment and regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction." *Id.* Further, a trial court's discretionary rulings, such as custody decisions, are reviewed for an abuse of discretion. *Id.* A trial court's choice, application or interpretation of law is reviewed for clear legal error. *Id.*

Child custody disputes are governed by the Child Custody Act of 1970, MCL 722.21 *et seq.* A trial court may amend or modify its previous custody judgment or order only "for proper cause shown or because of change of circumstances." *Rossow v Aranda*, 206 Mich App 456, 457; 522 NW2d 874 (1994), citing MCL 722.27(1)(C). The party seeking to change custody has the burden of proving by a preponderance of the evidence that either proper cause or a change of circumstances exists before the trial court can conduct a child custody hearing. *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). If this initial burden is not met,

“the trial court is not authorized by statute to revisit an otherwise valid prior custody decision and engage in a reconsideration of the statutory best interest factors.” *Rossow, supra* at 458.

To “establish ‘proper cause’ necessary to revisit a custody order, a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court.” *Vodvarka, supra* at 512. In making the determination whether the moving party has shown proper cause, the trial court may accept the moving party’s allegations as true. *Id.*, citing MCR 3.210(C)(7). The “appropriate ground(s)” should be relevant to at least one of the twelve statutory best interest factors enumerated in MCL 722.23(a)-(l) and “must be of such magnitude to have a significant effect on the child’s well-being.” *Vodvarka, supra* at 512.

To establish a change of circumstances, “a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child’s well-being, have materially changed.” *Vodvarka, supra* at 513 (emphasis in original). Not just any change in the conditions surrounding custody of the child will suffice; “the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child.” *Id.* at 513-514. Where a party seeking to change custody establishes neither proper cause or a change of circumstances by a preponderance of the evidence, the trial court is not authorized by statute to revisit an otherwise valid prior custody order. *Id.* at 508.

In the present case, defendant raises two bases for revisiting custody, but each fails to establish proper cause or a change of circumstances. Defendant first contends that a change in circumstance occurred because the minor children are older and their evolving emotional needs are not being met in plaintiff’s custody. However, aging can be considered a “normal life change” that will occur during the life of a child. *Vodvarka, supra* at 513. Moreover, defendant failed to establish what, if any, emotional needs of the minor children plaintiff allegedly failed to meet.

Additionally, defendant argues that a change in circumstances occurred because plaintiff failed to comply with a provision in the divorce judgment indicating that both plaintiff and defendant agreed to raise the children in the Roman Catholic faith and that plaintiff was actively interfering with the minor children’s religious upbringing. Defendant contends that the parties’ disagreement over how to raise the minor children constitutes proper cause and a change in circumstances. However, a review of the hearing on defendant’s motion shows that defendant did not show how the alleged changes have had or will have a significant effect on the minor children’s well-being. *Vodvarka, supra* at 513-514.

Further, although plaintiff was not under a duty to refute defendant’s allegations, a review of the documentary evidence submitted by plaintiff establishes that she was indeed raising the minor children according to the judgment of divorce. Correspondence between the parties indicates that plaintiff was actively allowing both children to participate in the Catholic church, and continuing each minor child’s religious education. The trial court noted that defendant failed to provide any support to show that plaintiff was interfering with the religious upbringing of the minor children. Accordingly, we conclude that the trial court did not abuse its discretion when it found that defendant failed to show proper cause or a change in circumstances

by a preponderance of the evidence. Thus, the trial court did not err in denying defendant's motion for a change in custody.

Defendant also argues that the trial court erred as a matter of law in concluding that it could not interfere with the religious decisions of the parties. A review of the record shows that the trial court stated at the motion hearing that defendant had provided no factual support for his argument that plaintiff was interfering with the children's upbringing in the Catholic faith, and also that defendant had cited no authority whatever to support that the court could find a change in circumstances based only on an allegation that plaintiff was precluding or interfering with the children's upbringing in the Catholic faith. Under the circumstance that the parties agreed to a provision in the judgment of divorce regarding the religious upbringing and education of the children, the court was not precluded from inquiring into the matter. Nevertheless, once it became clear to the court that plaintiff had not breached the agreement that the children would be raised in the Roman Catholic faith, and would continue their enrollment in the education program for catechism, the court properly eschewed any further involvement in defining what the nature of the children's Roman Catholic activities should be.

Defendant next argues that the trial court erred in imposing sanctions against defendant and defense counsel pursuant to MCR 2.114. We disagree.

Generally, "[t]his Court reviews a trial court's finding regarding whether an action is frivolous for clear legal error." *Jerico Const, Inc v Quadrants, Inc*, 257 Mich App 22, 35; 666 NW2d 310 (2003), citing *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made." *Kitchen, supra* at 661. Additionally, this Court reviews a trial court's determination of the amount of sanctions imposed under MCR 2.114 for an abuse of discretion. *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997). Whether a claim is frivolous pursuant to MCR 2.114 depends on the facts of the case. *Kitchen, supra* at 662. All documents, including pleadings and motions, must be signed either by the party filing the document, if not represented by an attorney, or, if represented, by at least one attorney of record. MCR 2.114(A); MCR 2.114(C). The signature of an attorney or party, whether or not an attorney represents the party, constitutes a certification by the signer that

- (1) he or she has read the document;
- (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
- (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. [MCR 2.114(D).]

The issuance of sanctions for violation of MCR 2.114(D) is mandatory pursuant to MCR 2.114(E), which provides:

**(E) Sanctions for Violation.** If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

In the present case, defendant's failure to provide factual and legal support for his allegations is evidence that his motion was not well grounded in fact, and was not warranted by existing law, as required by MCR 2.114(D)(2). We agree with the trial court's evaluation that defendant's motion was "not supported by documents, affidavits, or any materials whatsoever." By signing the motion, both defendant and defense counsel certified that the motion was "warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." MCR 2.114(D)(2). Defendant did not cite any legal authority in support of his motion. Further, defense counsel could not cite a single authority to support his position at the hearing on defendant's motion. The trial court correctly concluded that defendant's motion for change in custody "was not supported by the law." Accordingly, we conclude that the trial court did not clearly err because under the circumstances of this case, defendant's motion was not well grounded in fact or warranted by existing law. Thus, sanctions of reasonable attorney fees and costs against defendant and defense counsel were proper.

Defendant contends that, even if sanctions were appropriate under MCR 2.114, he was entitled to an evidentiary hearing regarding the reasonableness of plaintiff's attorney fees. "If the trial court has sufficient evidence to determine the amount of attorney fees and costs, an evidentiary hearing is not required." *John J Fannon Co v Fannon Products, LLC*, 269 Mich App 162, 171; 712 NW2d 731 (2005). "A trial court must consider the following factors when it determines whether attorney fees are reasonable: '(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.'" *John J Fannon Co, supra* at 171-172, quoting *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573, 588; 321 NW2d 653 (1982). However, the trial court is not required to give detailed findings regarding each factor. *John J Fannon Co, supra* at 172, citing *In re Attorney Fees and Costs*, 233 Mich App 694, 705; 593 NW2d 589 (1999).

In *John J Fannon Co*, the plaintiff and the plaintiff's counsel argued on appeal that the trial court abused its discretion when it imposed attorney fees and costs without conducting an evidentiary hearing. *John J Fannon Co, supra* at 171. However, the defendant's counsel had submitted detailed billing reports outlining the costs and fees associated with responding to the plaintiff's lower court and appellate filings. *Id.* Further, the circuit court judge was "very familiar with the history of the litigation and the amount of work required by plaintiff maintaining this frivolous litigation." *Id.* The *John J Fannon Co* Court affirmed the award of sanctions and found that the trial court did not abuse its discretion when it imposed reasonable attorney fees without conducting an evidentiary hearing. *Id.* at 171-172.

In the present case, a review of the lower court record shows that plaintiff did not submit a detailed billing report showing the amount of attorney fees and costs associated with responding to defendant's motion for change in custody. On the other hand, the court was very

familiar with the motion, and the amount of work plaintiff's counsel performed to oppose it. Counsel was required to review, assemble and present the documentary evidence presented to the court. Counsel went through e-mails, report cards, doctors' reports and other evidence in order to understand them and present them in a cogent manner to the court. A review of the material filed by plaintiff provides adequate support for the court's determination to award fees in the amount of \$ 2,000.

Lastly, plaintiff argues that this Court should assess additional sanctions against defendant on appeal pursuant to MCR 7.216(C). "Sanctions requested for a vexatious appeal are governed by MCR 7.216(C)(1)." *The Meyer and Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 60; 698 NW2d 900 (2005). MCR 7.216(C)(1) provides:

(C) Vexatious Proceedings.

(1) The Court of Appeals may, on its own initiative or on the motion of any party filed under MCR 7.211(C)(8), assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because

(a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal; or

(b) a pleading, motion, argument, brief, document, record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court.

(2) Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages. The court may remand the case to the trial court or tribunal for a determination of actual damages.

MCR 7.211(C)(8) provides:

(8) *Vexatious Proceedings*. A party's request for damages or other disciplinary action under MCR 7.216(C) must be contained in a motion filed under this rule. A request that is contained in any other pleading, including a brief filed under MCR 7.212, will not constitute a motion under this rule. A party may file a motion for damages or other disciplinary action under MCR 7.216(C) at any time within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious.

Plaintiff did not file a motion for sanctions as required under MCR 7.211(C)(8), and only included her request for sanctions in her appellate brief. We deny plaintiff's request for sanctions on appeal without prejudice to her filing a motion under MCR 7.211(C)(8).

Affirmed.

/s/ Donald S. Owens

/s/ Helene N. White

/s/ Joel P. Hoekstra